

LAW OFFICES OF
CHRISTOPHER HAYS
ONE EMBARCADERO CENTER, SUITE 500
SAN FRANCISCO, CALIFORNIA 94111

CHRISTOPHER HAYS, State Bar No. 59480
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Attorneys for Defendants
KEVIN VU and CAFE BONITA, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SINH DARELLA, INC.

vs.

KEVIN VU, etc., et al.,

Defendants.

No. C 07 04353 WHA

DECLARATION OF KEVIN VU
IN OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION

Hearing Date: 7 February 2008
Time: 8:00 a.m.
Courtroom: 9

I, Kevin Vu, hereby declare under penalty of perjury that:

1. I was born in Vietnam on 6 April 1965.

2. I came to the United States in 1978, when was 13 years old.

3. I became a citizen of the United States in 1986 or 1987.

4. I attended college at the University of California at Santa Barbara,

and graduated therefrom in 1988 with a Bachelor of Arts degree in Business
Economics.

5. I attended Temple University School of Dentistry in Philadelphia,
Pennsylvania, and graduated therefrom in 1997 with a Doctor of Dental Medicine
degree.

6. I have a current dental license with the State of California and with
Vietnam.

DECL KEVIN VU

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1 7. I am the president and sole shareholder of Cafe Bonita, Inc., a
2 California corporation, which owns and operates the restaurant known as the
3 "Boiling Crab" located at 393 North Capitol Avenue, San Jose, California (the "San
4 Jose "Boiling Crab" Restaurant").

5 8. I purchased a Mexican restaurant as an individual and named it
6 "Cafe Bonita" at that location in or about September 2003. I changed the
7 restaurant's type to Coffee Shop in or about Spring 2005.

8 9. The San Jose "Boiling Crab" Restaurant is, and has always been,
9 owned and operated by Cafe Bonita, Inc., a California corporation of which I am the
10 sole shareholder and officer .

11 10. The San Jose "Boiling Crab" Restaurant had been inspired by a
12 restaurant named "Boiling Crab" which I had seen in Ho Chi Minh City (formerly
13 "Saigon") (the "Vietnam "Boiling Crab" Restaurant") when I was traveling there
14 beginning in December 2005. My travel records for said trip are attached hereto
15 as Exhibit A.

16 11. The exterior sign of the Vietnam "Boiling Crab" Restaurant was in
17 English, and was colored red and blue.

18 12. In June 2006, I did a search on the United States Patent and
19 Trademark Office website for the name "Boiling Crab," and learned at that time that
20 the name was not registered. I accordingly named my new seafood restaurant the
21 "Boiling Crab" and it reopened under that name on or about 20 June 2006.

22 13. At no time prior to the naming of my restaurant the "Boiling Crab"
23 was I aware of the restaurants of similar name owned and operated by Plaintiff
24 herein, Sinhdarella, Inc.

25 14. When deciding on the interior decor of my "Boiling Crab"
26 restaurant in or before June 2006, I initially wanted to decorate the interior with
27 antique photographs of fishing and ocean scenes similar to what I had seen in
28 some seafood restaurants in San Jose, Santa Cruz, and San Francisco. I was

1 unable to find a source for such photographs after a search at the Santa Cruz Pier
2 and at Fisherman's Wharf in San Francisco.

3 15. As an alternative that still produced a visual effect of a seafood
4 theme, I decided to hang my own fishing pole and crab nets on the wall of the
5 restaurant, already had models of red crustaceans in the Mexican Restaurant, and
6 purchased seafood signs in Santa Cruz.

7 16. I chose the wall color and the font for the signs myself, without any
8 reference whatsoever to Plaintiff's restaurants, which I had never seen and about
9 which existence I was totally unaware.

10 17. The configuration of the tables and chairs was not changed from
11 my original setup for the Mexican Restaurant, "Cafe Bonita," in 2003.

12 18. The Menu of my "Boiling Crab" restaurant was inspired by the
13 Menu of the Vietnam "Boiling Crab" Restaurant, and was created by me without
14 any reference whatsoever to Plaintiff's restaurants, which I had never seen and
15 about which existence I was totally unaware. Copies of a Menu from the Vietnam
16 "Boiling Crab" Restaurant, and of the first Menu of the San Jose "Boiling Crab"
17 Restaurant, are attached hereto as Exhibits B and C, respectively.

18 19. The size of the Menu of the San Jose "Boiling Crab" Restaurant
19 was dictated by the size of a standard piece of 8-1/2" by 11" paper, which was
20 printed with 2 Menus and thereafter cut in half, and its color, orange, was chosen
21 by me from among approximately 15 colors of paper available from Office Depot
22 without any reference whatsoever to Plaintiff's restaurants, which I had never seen
23 and about which existence I was totally unaware.

24 20. In or about October 2007, at a time I was not represented by
25 counsel, Plaintiff's attorney, Michael De Vries, informed me that Plaintiff would have
26 the U.S. Marshal close my restaurant if I did not immediately stop using the "Boiling
27 Crab" name. Accordingly, for a period of about three weeks, until I was advised by
28 my present counsel, Christopher Hays, that the continuous use of the name

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1 "Boiling Crab" may be a defense to this action, I changed the restaurant's name to
2 the "Boiling Crawfish."

3 21. I had told my suppliers I planned to open a second restaurant to
4 get a better prices from them, and it was the truth. Everything regarding the
5 second restaurant was in the planning stage, and I wasn't sure if I could find a
6 second investor to take care of the second restaurant. Thereafter, at which time I
7 was again not represented by counsel, I spoke by telephone to Mr. De Vries, and
8 he asked me if I had a second restaurant, and I truthfully said no.

9 22. During yet another telephone conversation with Mr. De Vries
10 when I was not represented by counsel, at which time we were discussing
11 settlement, I told him that even before this lawsuit I had planned to live and retire in
12 Vietnam. Last year I lived almost 6 months in Vietnam. I also told Mr. De Vries that
13 even though I have assets, I also have lots of debt, so that even if he wins the case,
14 I will have to pay my lawyer and he will not get much because there will not be
15 much left.

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DECL KEVIN VU

1 I declare under penalty of perjury under the laws of the United States
2 that the foregoing is true and correct, and that this declaration is executed
3 at San Jose, California on the date set forth below.

4 Dated: 11 January 2008.

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7 Kevin Vu
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Exhibit A

93A602 00033 11/24/2019

OD 6M9ZAI1P

PASSENGER ITINERARY
PAGE NO. 1

PLS INSPECT YOUR TKTS
IMMED. WE WILL NOT BE
RESPONSIBLE FOR ERRORS
MADE 48 HRS AFTER DELIV

UU/KEVIN

24NOV06

A WE 29NOV LV LOS ANGELES	1140P	EVA	1B OK
01DEC AR TAIPEI	600A		OSTOP 747
A FR 01DEC LV TAIPEI	720A	EVA	395B OK
AR HO CHI MINH CTY	950A		OSTOP JET
A TU 16JAN LV HO CHI MINH CTY	1245P	EVA	392B OK
AR TAIPEI	500P		OSTOP 747
A TU 16JAN LV TAIPEI	640P	EVA	12B OK
AR LOS ANGELES	205P		OSTOP 747

HAVE A PLEASANT TRIP

PASSENGER TICKET NUMBER (S) 695 7656101150		EXCESS BAGGAGE TICKET	PASSENGER COUPON	DATE AND PLACE OF ISSUE OR
IN CONJUNCTION WITH / IN EXCHANGE FOR		<input type="checkbox"/> SKIING EQUIPMENT <input type="checkbox"/> GOLFING EQUIPMENT <input type="checkbox"/> PET <input checked="" type="checkbox"/> BULKY BAGGAGE _____ SEATS <input checked="" type="checkbox"/> 2/3		
EXCESS WEIGHT (KG) 300 15 2.46	EXCESS PIECE(S) / OVERSIZE			
RATE PER KG OR PIECE 11.15				
CHARGE US\$ 327.00				
TAX	CARRIER 36	FROM LA	REMARKS APR # 077622 UU/KZ1 V	
TOTAL 111 327.00	CARRIER UA	TO TP	ISSUED BY EVA AIR	
FORM OF PAYMENT US\$ 98520 0514 512 x 111		TO 201	SUBJECT TO CONDITIONS OF CONTRACT OF PASSENGER TICKET AND BAGGAGE CHECK	
			CPN AIRLINE CODE FORM AND SERIAL NUMBER CK 695 4520474902 6 0	

P.1

TO:14159310444

JUN-16-2005 01:47A FROM: DO NOT MARK OR STAMP IN THE WHITE AREA ABOVE

Exhibit B



LOUISIANA CRAWFISH
THE BOILING CRAB

Nhà Hàng Cua

157 Lê Thánh Tôn, P. Bến Thành, Q.1, Tp.HCM

(08) 823 3289

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Filed 01/17/2008

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Menu

in VN

Thực đơn.....

Crawfish

Small (Nhỏ) 117.000 VND

Large (Lớn) 197.000 VND

Crab

Small (Nhỏ) 147.000 VND

Large (Lớn) 247.000 VND

Tiger Shrimp

Small (Nhỏ) 137.000 VND

Large (Lớn) 237.000 VND

Crawfish Fried Rice

Cơm chiên Crawfish 79.000 VND

Crawfish Pasta

Mì Ý Crawfish 79.000 VND

Crawfish Cocktail Salad

Salad trái cây 49.000 VND

The Boiling Crab Salad

Salad Nhà Hàng Cua 49.000 VND

Crawfish Bisque Soup

Soup Crawfish 49.000 VND

The Boiling Crab Soup

Soup Nhà Hàng Cua 49.000 VND

Corn

Bắp 7.000 VND

Sausage

Xúc xích 7.000 VND

Nước uống.....

SODA (Coke, 7 up, Diet Coke, Twister, Xá xị...) 15.000 VND

Nước Suối 15.000 VND

Nước Dừa 15.000 VND

Bia (Heineken, Tiger, Sài Gòn) 22.000 VND

Mở cửa các ngày trong tuần. Từ 10:30 - 23:30

Email: contact@nhahangcua.com

Exhibit C

1st Month
OF opening 2006



THE BOILING CRAB
393 N CAPITOL AVE
SAN JOSE, CA 95133
(408) 347-8344

Menu

LOUISIANA CRAWFISH\$8.99/lb

Extra: garlic butter \$.50

OYSTERS (Raw).....6pieces.....\$9.99

CRAB**LA Cajun style/Steam**.....\$10.99/lb

SHRIMP**LA Cajun style/Steam**\$7.99lb

CLAM**Steam only**\$7.99/lb

CORN.....\$.50/EA

SAUSAGE.....\$.50/EA

DRINKS

SODA (Coke, 7 up, Diet Coke).....\$1.50/EA

BOTTLE WATER.....\$1.50/EA

DOMESTIC BEER.....\$3.50/EA
(Budweiser, Budlight, Barcardi,)

IMPORTER BEER.....\$3.50/EA
(Heineken, Corona, Negra Modelo, Pacifico)

OPEN 7 DAYS A WEEK!

EVERYDAY 12:00 PM-10:00 PM